

1 THOMAS F. KOEGEL (SBN 125852)
tkoegel@crowell.com
2 NATHANIEL P. BUALAT (SBN 226917)
nbualat@crowell.com
3 CROWELL & MORING LLP
275 Battery Street, 23rd Floor
4 San Francisco, California 94111
Telephone: 415.986.2800
5 Facsimile: 415.986.2827

6 CHRISTOPHER FLYNN (admitted *pro hac vice*)
cflynn@crowell.com
7 CROWELL & MORING LLP
1001 Pennsylvania Avenue, N.W.
8 Washington, D.C. 20004-2595
Telephone: (202) 624-2500
9 Facsimile: (202) 628-5116

10 JENNIFER S. ROMANO (SBN 195953)
jromano@crowell.com
11 CROWELL & MORING LLP
515 South Flower Street, 40th Floor
12 Los Angeles, California 90071
Telephone: (213) 622-4750
13 Facsimile: (213) 622-2690

14 Attorneys for Defendants
UNITED HEALTHCARE INSURANCE COMPANY
15 and UNITED BEHAVIORAL HEALTH

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN FRANCISCO DIVISION

19 DAVID AND NATASHA WIT, on behalf
20 of themselves and all others similarly
21 situated, and BRIAN MUIR, on his own
behalf and on behalf of all others similarly
situated,

22 Plaintiffs,

23 v.

24 UNITED HEALTHCARE INSURANCE
25 COMPANY and UNITED BEHAVIORAL
HEALTH (operating as OPTUMHEALTH
26 BEHAVIORAL SOLUTIONS),

27 Defendants.
28

Case No. 3:14-CV-02346-JCS

**DEFENDANTS UNITED HEALTHCARE
INSURANCE COMPANY AND UNITED
BEHAVIORAL HEALTH'S
ADMINISTRATIVE MOTION TO SEAL
PORTIONS OF AND EXHIBITS TO THE
DECLARATIONS OF JENNIFER D.
THOMPSON KINBERGER AND JANE E.
STALINSKI**

Judge: Hon. Joseph Spero
Courtroom: G

Action Filed: May 21, 2014

Pursuant to Civil Local Rules 79-5 and 7-11, defendants United Healthcare Insurance Company (“UHIC”) and United Behavioral Health (“UBH”) (collectively, “Defendants”), respectfully move this Court for leave to file under seal portions of and exhibits to (1) the Declaration of Jennifer D. Thompson Kinberger in Support of Defendants United Healthcare Insurance Company and United Behavioral Health’s Motion to Transfer Venue under 28 U.S.C. § 1404(a) (“Kinberger Declaration” or “Kinberger Decl.”) and (2) the Declaration of Jane E. Stalinski in Support of Defendants United Healthcare Insurance Company and United Behavioral Health’s Motions to Transfer Venue under 28 U.S.C. § 1404(a), to Dismiss, and to Seal (“Stalinski Declaration” or “Stalinski Decl.”).

Specifically, Defendants request that the following materials be filed under seal because they contain personal information relating to Plaintiffs (the “Personal Information”):

- Portions of the Kinberger Declaration, as identified with highlighting in the versions submitted to the Court;
- Exhibits 1-3 to the Kinberger Declaration in their entirety;
- Portions of the Stalinski Declaration, as identified with highlighting in the versions submitted to the Court; and
- Exhibits 5-6 of the Stalinski Declaration in their entirety.

Defendants further request that the following materials be filed under seal because they contain confidential, proprietary, and competitively-sensitive information relating to Defendants (the “Competitively Sensitive Information”):

- Exhibits 1 and 3 of the Stalinski Declaration in their entirety.

This motion is accompanied by the Declaration of Nathaniel P. Bualat in Support of Defendants’ Administrative Motion to Seal (“Bualat Declaration” or “Bualat Decl.”) and the Stalinski Declaration pursuant to Civil Local Rule 79-5(d)(1)(A), a stipulation pursuant to Civil Local Rules 7-11, and a proposed order in accordance with Civil Local Rules 7-11 and 79-5(d)(1)(B).

DISCUSSION

The Ninth Circuit has articulated two standards for evaluating a sealing request: (i) a “compelling reasons” standard, for materials used at trial or filed as part of dispositive motions, and (ii) a more lenient, “good cause” standard applied to non-dispositive motions filed during the pendency of an action. *See Kamakana v. City and Co. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). Here, because the information that Defendants seek to seal is in support of Defendants’ non-dispositive Motion to Transfer Venue¹, the more lenient “good cause” standard should apply to Defendants’ request to seal.

Through this Motion, Defendants seek to seal two types of information: personal information and protected health information relating to Plaintiffs (“Personal Information”) and confidential, proprietary, and competitively-sensitive information relating to Defendants (“Competitively Sensitive Information”). As discussed below, the Bualat Declaration and Paragraph 9 of the Stalinski Declaration establish that the information identified above is sealable under the “good cause” standard, as well as under the “compelling reasons” standard.

Personal Information

The Personal Information at issue in this Motion includes information reflecting Plaintiffs David Wit’s, Natasha Wit’s, and/or Brian Muir’s health information, addresses, dates of birth, health plan identification numbers, healthcare medical record and claim numbers, social security numbers, and phone numbers. Declaration of Nathaniel P. Bualat in Support of Defendants’ Administrative Motion to Seal Portions of and Exhibits to the Declarations of Jennifer D. Thompson Kinberger and Jane E. Stalinski, ¶¶ 2-4. Such information has been considered to be individually identifiable health information under the Health Insurance Portability and Accountability Act. *See* 45 CFR § 164.514 (listing information that should be removed to de-identify protected health information, including birth dates, telephone numbers, social security

¹ While the Stalinski Declaration also supports Defendants’ concurrently-filed Motion to Dismiss, Defendants rely upon Paragraphs 4-5 of and Exhibits 2 and 4 to the Stalinski Declaration for their Motion to Dismiss and Defendants do not seek to seal those paragraphs or exhibits.

1 numbers, medical record numbers, health plan beneficiary numbers, and account numbers).

2 Accordingly, there is “good cause” and “compelling reasons” to seal the Personal Information at
3 issue in this Motion.

4 **Competitively Sensitive Information**

5 It is well-established that “access to judicial records is not absolute,” and that certain types
6 of non-public, commercially sensitive documents may be protected from public disclosure. *See*
7 *Kamakana*, 447 F.3d at 1178 (9th Cir. 2006). Rule 26 of the Federal Rules of Civil Procedure
8 provides district courts with broad discretion to seal filed materials in order to protect, among
9 other things, “a trade secret or other confidential research, development, or commercial
10 information.” *See* Fed. R. Civ. P. 26(c)(1)(g). Moreover, the financial details and other
11 negotiated terms of contractual agreements meet the good cause and compelling reasons
12 standards. *See In re Elec. Arts, Inc.*, 298 F. App’x 568, 569 (9th Cir. 2008) (determining that
13 “pricing terms, royalty rates, and guaranteed minimum payment terms” constitute the “precise
14 sort of information” that under the compelling reasons standard “plainly falls within the definition
15 of trade secrets and therefore must be sealed.”); *Rainbow Bus. Solutions v. Merch. Servs.*, 2013
16 U.S. Dist. LEXIS 67190, at *9 (N.D. Cal. May 10, 2013) (finding compelling reasons to seal
17 “particular information about the party’s contractual agreements, including items such as pricing
18 arrangements” and that disclosure of “pricing arrangements, business model and strategies” of the
19 designating party “would allow its competitors to copy or adopt these practices ... reducing or
20 eliminating the competitive advantage that this information provides”); *see also Apple Inc. v.*
21 *Samsung Elecs. Co.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013) (finding pricing, profit, and customer
22 information sealable under the compelling reasons standard).

23 Here, as set forth in Paragraph 9 of the Stalinski Declaration, the Competitively Sensitive
24 Information reflects the negotiated terms of Defendants’ contractual agreements, which includes
25 the structure of Defendants’ relationships with clients and the rates that Defendants charge for
26 their services and/or products. Stalinski Decl., ¶ 9. This type of information is properly sealable
27 because disclosure would provide competitors as well as potential clients with unfair bargaining
28 leverage in future negotiations. *See, e.g., Rainbow Bus. Solutions*, 2013 U.S. Dist. LEXIS 67190,

at *9 (“the public disclosure of [contract terms] would impede [the party’s] ability to negotiate with business partners and to stay competitive in the marketplace.”) In addition, disclosure of this type of information could be used by competitors to undercut pricing and provide an unfair competitive advantage. Accordingly, there is “good cause” and “compelling reasons” to seal the Competitively Sensitive Information at issue in this Motion.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant their motion to file the following materials under seal:

- Portions of the Kinberger Declaration, as identified with highlighting in the versions submitted to the Court;
- Exhibits 1-3 to the Kinberger Declaration in their entirety;
- Portions of the Stalinski Declaration, as identified with highlighting in the versions submitted to the Court; and
- Exhibits 1, 3, 5 and 6 of the Stalinski Declaration in their entirety.

Dated: July 18, 2014

CROWELL & MORING LLP

/s/ Nathaniel P. Bualat

Christopher Flynn
Jennifer S. Romano
Nathaniel P. Bualat

Attorneys for Defendants

UNITED HEALTHCARE INSURANCE COMPANY
and UNITED BEHAVIORAL HEALTH

SFACTIVE-903375876.2